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IFB # 301-22-128 Storage and Distribution of USDA Donated Foods, Regions V - VI

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- I. **PURPOSE:** The purpose and intent of this Invitation for Bids (IFB) is to solicit sealed bids to establish an annual contract(s) with one or more Successful Bidder(s) to provide for the receipt, storage, and delivery of USDA donated foods to Virginia schools, institutions, and other agencies (hereinafter referred to as agencies) for the Virginia Department of Agriculture and Consumer Services, an agency of the Commonwealth of Virginia (VDACS). For the purpose of this IFB, the Successful Bidder(s) may also be referred to as the Distributing Agency or Contractor. The work will take place at multiple locations within the Commonwealth of Virginia.

II. **BACKGROUND:**

- A. VDACS is the agency authorized by the United States Department of Agriculture (USDA) to manage the distribution of federal donated food to state agencies supported by the food programs.
- B. The USDA established general standards and procedures that must be followed concerning the shipment and receipt of USDA foods. **For the current standards for the transport and receipt of USDA Foods, please refer to the FNS Instruction 709-5 Rev. 2, Shipment and Receipt of USDA Foods.** (Link below)

<https://fns-prod.azureedge.net/sites/default/files/resource-files/fns-709-5-rev-3.pdf>

- C. The service areas within the Commonwealth of Virginia consist of seven (VII) regions. Only regions V and VI are being bid in this solicitation and these existing contracts will expire on June 30, 2022. (Refer to the map in Appendix D.) The contractors providing services in these regions are as follows:

Region V (Roanoke Valley): H.T. Hackney Co.

Region VI (Southside Central VA): H.T. Hackney Co.

- D. Current contract pricing is as follows:

Service	Region V	Region VI
Weekly delivery per case:	\$3.78	\$3.78
Every-other week delivery per case:	\$3.59	\$3.59
Pick-up by agency:	\$0.04	\$0.04
Storage price per case per month:	\$0.86	\$0.86

III. SCOPE OF WORK:

A. GENERAL REQUIREMENTS:

1. The Successful Bidder(s) shall furnish all storage facilities, inventory and delivery data processing equipment, transportation, materials, handling equipment, and labor to receive, store, distribute, and track USDA donated foods. The Successful Bidder(s) are also required to register on the USDA's Web-Based Supply Chain Management System (WBSCM). Instructions can be found at the USDA website, <https://www.usda.gov/wps/portal/usda/usdahome?navid=WBSCM>
2. Bidders being awarded a contract will be required to provide an executed Commonwealth of Virginia Standard Performance Bond for Non-Construction and a Standard Labor and Material Payment Bond for Non-Construction, each in the amount of \$500,000.00, with the Commonwealth of Virginia as the obligee. (Refer to Section V.I. and Appendix E & F.)

- B. **GOODS:** Recipient agencies in the state are potentially eligible to receive about 100 different items of packaged USDA foods. Approximately 100 different items were shipped into Virginia during the 2020/2021 school year. **Appendix A** indicates total case counts for these items, categorized according to warehouse requirements as:

---	Dry groceries	20
---	Refrigerated foods	- frozen	29
		- chilled	20

In addition to the USDA items listed, approximately 300 different further-processed products are received from commercial food processors. (For example, they manufacture chicken nuggets from whole chickens.) These items are primarily frozen items and quantities vary from year to year. **Successful Bidder(s) agree to accept all items ordered by VDACS, both from USDA vendors and from further-processors.**

C. INBOUND FREIGHT:

1. Method of Arrival: Currently, USDA shipments into the state are by either tractor trailer or container.
2. Prepaid Shipments: All donated foods shipped into a Successful Bidder's warehouse will be totally prepaid; i.e., product and freight. The VDACS office will notify the Successful Bidder(s) of expected shipping periods of USDA foods. Shippers will notify the Successful Bidder(s) of dates of shipments. Truckers will be required to prearrange unloading appointments directly with the Successful Bidder(s). Manufacturers of further-processed items will also prearrange unloading appointments.
3. Incoming Shipments: Frequency and volume of incoming shipments will vary from one region to another. **See Appendix A.**

The Successful Bidder(s) shall receive inbound freight in accordance with USDA/FNS (FD) Instruction 709-5, Shipment and Receipt of Foods, (copy on file in the Richmond Food Distribution Office) and will be responsible for the following:

- a. Receiving shipments Monday through Friday during normal business hours of at least 8 hours per day.
- b. Though approximately 90% or more of all incoming shipments will be palletized, the Successful Bidder(s) must provide all labor and equipment for unloading including the few non-palletized loads. Over-the-road truck drivers (not drivers delivering piggyback trailers) may be requested to assist with unloading non-palletized loads by palletizing or placing units on the tailgate. Drivers are not required to re-palletize loads to meet the Successful Bidder's individual storage requirements such as pallet size, height, type of tie, etc.
- c. The Successful Bidder(s) shall unload trucks on the day of arrival when the shipper or trucker made an appointment at least 24 hours in advance. When no advance appointment was made, the Successful Bidder(s) must attempt to unload trucks within 24 hours of arrival. **In all cases, trucks must be unloaded within 48 hours of arrival unless specifically exempted by VDACS.**
- d. Positively identify incoming shipments using the Bill of Lading matched against the WBSCM Requisition Status Report and only unload trailers or portions of trailers so identified. **The Successful Bidder(s) must call VDACS for assistance prior to unloading if positive identification is not possible.**
- e. Inspecting each load for condition upon arrival and immediately notifying VDACS (phone 804-786-3936) of any problems with condition/quality or quantity. **The Successful Bidder(s) may not refuse a shipment without VDACS approval.** Verifying the accuracy of each count and notifying the carrier's agent of any overages, shortages, or damages before releasing the delivery vehicle. Also, maintaining a written record of carrier notification and execution of Over, Short, and Damaged Report (OS&D) as may be required.
- f. Updating the USDA's WBSCM: When a commodity shipment arrives, the Successful Bidder(s) must log into the USDA's WBSCM, click on the "Operations" tab, choose "Shipment Receipts" and fill in the necessary information WITHIN TWO (2) CALENDAR DAYS OF THE TRUCK'S ARRIVAL. Failure to complete this requirement within the designated time frame will result in the Successful Bidder(s) accepting financial responsibility for any loss or damages left unreported.
- g. Notifying agencies within the contract region of a shipment arrival at least weekly and forwarding all receiving reports, OS&D reports, and other documents to VDACS, Food Distribution Program, P.O. Box 1163, Richmond, VA 23218 within two (2) business days. Storage fees will begin to accrue on the 61st day after Notice of Arrival has been issued to the agency.
- h. Cleaning and repackaging, as required, any damaged merchandise so that all foods suitable for human consumption are salvaged for program use.

- i. Paying for all freight storage, demurrage and detention charges that occur due to unloading delays, unless specifically exempted by VDACS.
- j. Bracing or leveling stop-off shipments for transport to other destinations.
- k. **The Successful Bidder(s) shall be liable for claims levied by the USDA against them or VDACS as a result of the Successful Bidder's failure to properly secure, handle, or account for shipments.**

D. **WAREHOUSING/STORAGE:**

1. **Storage Facilities:** Storage facilities must be constructed and operated to provide secure and sanitary storage at all times. Temperature and conditions must be as recommended by the Refrigeration Research Foundation. Foods must be stored off the floor and away from walls to allow for air circulation.

Successful Bidder(s) must have adequate warehouse facilities for the following:

---Dry Groceries -regular care: Ventilated space.

-special care: Maintain temperature at 70° F or less year round. Grain products will require refrigeration storage during summer months where dry warehouse temperatures continuously exceed 70° F.

---Frozen foods -maintained at 0° F or below.

---Chilled items -normally 36° F (32° F to 41° F, depending on the item)

Freezers must be equipped with some type of monitoring/alarm device that will alert the Successful Bidder(s) to equipment failure or malfunction, or records must be kept which document that required holding temperatures are being maintained in the freezers and coolers. Federal Regulations require that temperatures be recorded a minimum of three times per week. Such records shall be available for inspection by VDACS.

The distributing agency must ensure that donated foods at all storage facilities used by the distributing agency (or by a sub-distributing agency) are stored in a manner that permits them to be distinguished from non-USDA foods, and must ensure that a separate inventory record of donated foods is maintained. The distributing agency system of inventory management must ensure that donated foods are distributed in a timely manner and in optimal condition. On an annual basis, the distributing agency must conduct a physical review of donated food inventories at all storage facilities used by the distributing agency (or by a sub-distributing agency), and must reconcile physical and book inventories of donated foods. The distributing agency must report donated food losses to FNS, and ensure that restitution is made for such losses.

The total amount of warehouse space required will vary from one region to another, as well as from month to month. The heaviest USDA shipping periods are mid-August through October and January through February.

2. **Stock Rotation:** The Successful Bidder(s) must stock and space foods in a manner so that USDA Donated Foods are readily identified. For USDA Donated Foods not bearing the USDA label and legend "Not to be sold or exchanged", the Successful Bidder(s) must use a method of identification, i.e. placard, stamp, bar code, etc., as well as slotting records, that sufficiently identify those cases as USDA. Evidence of stock rotation must be provided upon request. The required method of stock rotation is first-in-first-out (FIFO). Foods delivered to the warehouse first, should be the first items distributed to recipient agencies.
3. **Sanitation:** The Successful Bidder(s) shall allow warehouses to be inspected by the VDACS Food Inspection Section, or if the facility is located in another state, the warehouse can be inspected by the comparable state agency. Warehouse facilities and warehousing practices must be continuously in compliance with the United States Food, Drug, and Cosmetic Act. Warehouses must also be in compliance with Virginia Food Laws or comparable state food laws if the warehouse is outside of Virginia. The Successful Bidder(s) must also allow inspection by the United States Department of Agriculture or any of its duly authorized representatives in order to determine compliance.
4. **Safe Storage and Control:** Commercial storage facilities under contract with either the distributing agency or sub-distributing agency must provide facilities for the storage and control of donated foods that protect against theft, spoilage, damage, or other loss. Accordingly, such storage facilities must maintain donated foods in sanitary conditions, at the proper temperature and humidity, and with adequate air circulation. The facility must be free from rodent, bird, insect and other animal infestation. The distributing agency must ensure that storage facilities comply with all Federal, State, or local requirements relative to food safety and health and procedures for responding to a food recall, as applicable, and obtain all required health inspections. The Successful Bidder(s) must also permit the performance of on-site reviews of the storage facility by the state distributing agency (VDACS), the Comptroller General, the United States Department of Agriculture, or any of its duly authorized representatives, in order to determine compliance.

E. **TRANSPORTATION:** The Successful Bidder(s) must own or lease (or submit an acceptable plan for possession of) adequate delivery vehicles at the time the contract is awarded as follows:

1. Van trucks for delivery of dry groceries and refrigerated trucks for delivery of refrigerated items; or
2. Dual compartment trucks for combination deliveries of dry groceries and refrigerated items (0° F); or
3. Single compartment refrigerated trucks (0° F) for separate or integrated deliveries of dry groceries and refrigerated items.

Delivery temperature of frozen and chilled foods shall be in accordance with the Association of Food and Drug Officials' (AFDO) Model Food Code as recommended by the Food and Drug Administration (Federal).

The Successful Bidder(s) shall utilize separate trucks, compartments, or protective equipment necessary to maintain proper temperatures on all items including keeping temperature sensitive products from becoming too cold or too hot. The number of vehicles required will depend on the size of the trucks and the variation in delivery

volume.

- F. **NOTIFICATION OF SHIPMENT ARRIVALS:** The Successful Bidder(s) must notify schools and institutions within their region(s) of shipments received during each week by mailing, faxing, or e-mailing, at least weekly, a notice to each recipient agency. Storage fees will not begin to accrue until the 61st day following the Successful Bidder's issuance of the notice. Each agency's notice must include the Successful Bidder's name, the agency name, and the data shown below for each shipment in which the agency is included:

- A. Food Item
- B. Sales Order Number or foods identified as processed items
- C. Number of cases for the Agency
- D. Date Received
- E. Storage Expiration Date

The Successful Bidder(s) must mail or email a weekly master listing to VDACS that differs from agency notices only in listing the total units received for each shipment. The Successful Bidder(s) shall issue notices Friday of each week listing shipments that arrived Monday through Friday of that week (or arrived Friday of the preceding week through Thursday of that week). If the Successful Bidder(s) fails to issue notices as outlined above, the Date Received and Storage Expiration Date must be moved forward to the week in which the notice is issued. The Successful Bidder(s) must establish an internal check system to ensure that notices for each shipment received have been issued. This system must be approved by VDACS and operational by July 1, 2022.

- G. **OUTBOUND DELIVERIES:**

1. **Prior Notification:** The Successful Bidder(s) shall receive orders from school divisions and other recipient agencies for outbound shipments at least 48 business hours prior to scheduled delivery dates. Orders will designate number of cases of items to be delivered to each school or other recipient agency. The Successful Bidder(s) shall deliver the number of cases requested by the agency, regardless of the quantity, however; the Successful Bidder(s) may bill the agency for a 20 case minimum if less than 20 cases are requested.
2. **Delivery Schedules:** Deliveries shall be made weekly or every other week at the option of the agencies in accordance with the fees contracted through this solicitation. All individual schools within a public school district will be required by VDACS to have the same frequency of delivery. Private schools and institutions will not have the option of every week delivery unless the public school district in which they are located also selects this option.

The Successful Bidder(s) shall submit delivery schedules to agencies within their region(s) no later than ninety (90) days after award of the contract, and the Successful Bidder(s) must adhere to such schedules. In the case of a temporary change, they will only be made upon the consent of the agencies. For permanent changes, the Successful Bidder(s) must submit the new delivery schedule to agencies at least two (2) weeks prior to the proposed long-term delivery change.

3. **Hours of Service:** Deliveries shall be made to agencies between the hours of 7 a.m. and 3 p.m. unless special arrangements are made in advance. Deliveries shall be made Monday through Friday except school holidays or other times when schools are closed, such as for inclement weather. Deliveries missed due to holidays, breakdowns, etc., shall be automatically rescheduled for the first business day

following the missed appointment. In the event of inclement weather, Successful Bidder(s) shall contact the agency to determine a mutually agreeable delivery date.

4. Placement of Commodities: Drivers and/or helpers shall deliver merchandise into designated receiving areas at each agency. Drivers or helpers shall not be required to stow merchandise on shelves or in freezers or refrigerators. However, drivers and/or helpers should cooperate with schools by rolling stock into walk-in freezers/coolers and stock rooms provided such rooms are in accessible condition.

Drivers and helpers shall request an authorized agency receiver or the designated representative to verify accuracy of items, quantities of each item, total quantities, and condition of merchandise. **Each delivery ticket must be signed by a designated agency receiver.** Variations from the norm, i.e. shortages, damages, etc., will be noted on each ticket by the designated agency receiver. A copy of each delivery ticket shall be left at the agency.

5. Mixed Loads: The Successful Bidder(s) may deliver donated foods in straight loads containing USDA donated foods only, or in mixed loads with commercially purchased foods, as long as other terms of the contract are satisfied. Foods must not be stored or delivered with chemicals or other products that may be harmful to the quality or safety of the foods. Commercial foods will count toward the 20 case minimum delivery mentioned in Section G.1. The composition of the load is up to the agency's discretion.
6. Special Deliveries: Special or intermediate deliveries are not required under terms of this contract, except in the event of a missed appointment. See Section G.3.
7. Delivery Errors: In those instances where the Successful Bidder(s) fails to deliver items in stock which were properly ordered by an agency, the Successful Bidder(s) shall deliver those items no later than the next business day following the originally scheduled delivery date.
8. Agency Pick-ups: Some recipient agencies may choose to pick up their food directly from the Successful Bidder's warehouse and VDACS may transfer foods among warehouses from time to time. The price quoted for direct pickups will apply to these recipient agencies and VDACS. A recipient agency selecting this option will be required to pick up all foods, and no deliveries will be necessary to that agency for the period of the contract. Agencies selecting this option must indicate their desire to do so at the beginning of the contract year and cannot change their option for the remainder of the contract period.
9. Summer Feeding: The Successful Bidder(s) shall make a one-time delivery to VDACS approved Summer Feeding sites during June of each year. Foods for agencies are normally received in March and April and may be stored for VDACS until allocated to the agencies. Except for delivery frequency, all other terms and conditions of this contract are applicable. These agencies will be charged the every other week delivery fee.
10. Charitable Agencies: The Successful Bidder(s) will make a minimum one-time delivery to VDACS approved Charitable Agencies. Foods for agencies are normally received in February and may be stored for VDACS until allocated to the agencies. In the case of Charitable Agencies, any storage fees incurred will be paid by the Agency receiving the donated food. Delivery fees to approved Charitable Agencies should be billed directly to VDACS.

H. **REPORTS/INVENTORY:**

1. Receipts of Shipments: Within two calendar days of each shipment's arrival, the Successful Bidder(s) will submit both a signed "Received Shipment" report from WBSCM and a Bill of Lading. Over, Short, and Damage Reports (OS&D) shall also be completed and submitted to VDACS when discrepancies in case counts are found or when damage is involved. The OS&D report must be submitted within two business days of the shipment's arrival.
2. Accounting System: The Successful Bidder(s) must have a computer accounting system that shows agency invoices, payments and both agency and VDACS credits. Computerized reports, in a spreadsheet format, must be available upon request by agencies or VDACS personnel.
3. Inventory Controls: Inventory reports shall be submitted monthly to VDACS and to school systems. Inventory reports for school systems may be submitted less frequently than monthly upon the concurrence of the school system and VDACS. Inventory reports shall convey the following information by item and delivery order number:
 - a. Quantity on hand at beginning of monthly period.
 - b. Receipts during month.
 - c. Deliveries during month (listed by agency). Only receipted (signed for) deliveries shall be considered as delivered; all other merchandise shall be considered as "in inventory".
 - d. Quantity on hand at end of monthly period.

I. **WAREHOUSE OVERAGES AND SHORTAGES:**

1. The Successful Bidder(s) shall be financially responsible for shortages and damages to products or packages that make them unacceptable to recipient agencies. Damage shall include infestation of product due to improper storage conditions, as well as, physical damage to containers including serious rust.
2. The Successful Bidder's settlements shall be made in the form of cash payments equivalent to VDACS' current full value or by replacement with an equal quantity of equal quality product, at the option of VDACS officials. Known shortages and losses due to damages shall be settled at the time of the occurrence. Shortages, damages and losses to further processed items shall always be settled immediately.
3. Should overage and shortage discrepancies between physical inventory and book inventory exist, such discrepancies shall be reconciled. Irreconcilable overages and shortages will be settled by computing the full value of such shortages and overages (as well as fees paid for further-processed items). If the value of shortages exceeds the value of overages, a monetary settlement with VDACS shall be required for the difference in value. If the value of overages exceeds the value

of shortages, no monetary settlement is required. Book inventory will be adjusted after settlement to correspond with the physical inventory.

4. Donated food must be clearly identified. An inventory system must be maintained and an annual and/or bi-annual physical inventory will be conducted by VDACS staff and reconciled with the inventory records.

J. **DISTRIBUTION OF FEDERAL FUNDS:**

1. The Successful Bidder(s) will be required to place the State Administrative Expense funds received from the Federal government via the Virginia Department of Agriculture and Consumer Services (VDACS) into a credit account for recipient agencies (schools) within their contracted distribution region(s) (Region V & VI). The Successful Bidder(s) will be required to disperse any remaining State Administrative Expense (SAE) funds by issuing a check directly to the schools at the end of the federal fiscal year on September 30. The amount each school receives will be determined by VDACS. The Successful Bidder(s) will directly invoice schools for any storage and delivery costs incurred by that school. The State Administrative Expense funds are to help schools offset the cost of storage and distribution.
2. VDACS will administer the (SAE) funds by issuance of a check to the Successful Bidder(s) executed via an eVA purchase order. It is expected there will be no more than two (2) purchase orders issued per region per contract year.

IV. **GENERAL TERMS AND CONDITIONS:**

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under "Vendors Manual" on the vendors tab.
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate

accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1 and 2 below apply:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

- H. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs:**
Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
- I. **CLARIFICATION OF TERMS:** If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. **PAYMENT:**
1. **To Prime Contractor:**
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
 - e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
- c. Each prime contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
- d. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

K. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *VENDORS MANUAL*, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

L. **QUALIFICATIONS OF BIDDERS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the services/furnish the goods and the bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

- M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the

Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- Q. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverages during the entire term of the contract and that all coverage will be provided by companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
 2. Employer's Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
 4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)
- R. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract as a result of this solicitation, the purchasing agency will publicly post such notice in eVA (www.eva.virginia.gov) for a minimum of 10 days.
- S. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or

on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- T. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

- U. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS:** The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet eprocurement solution by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal being rejected.

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

1. For orders issued July 1, 2014, and after, the Vendor Transaction Fee is:
 - a. DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
 - b. Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.
2. Refer to Special Term and Condition “eVA Orders and Contracts” to identify the number of purchase orders that will be issued as a result of this solicitation/contract with the eVA transaction fee specified above addressed for each order.

For orders issued prior to July 1, 2014, the vendor transaction fees can be found at www.eVA.virginia.gov.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, typically within 60 days of the order issue date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- V. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- W. **SET-ASIDES IN ACCORDANCE WITH THE SMALL BUSINESS ENHANCEMENT AWARD PRIORITY.** This solicitation is set-aside for DSBSD-certified micro businesses or small businesses when designated “Micro Business Set-Aside Award Priority” or “Small Business Set-Aside Award Priority” accordingly in the solicitation. DSBSD-certified micro business or small businesses, this include the DSBSD-certified women-owned and minority-owned businesses when they have received the DSBSD small business certification. For purposes of award, bidders shall be deemed micro business or small businesses if and only if they are certified as such by DSBSD on the due date for receipt of bids.
- X. **BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, bidders shall state bid prices in US dollars.
- Y. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- Z. **CIVILITY IN STATE WORKPLACES:** The contractor shall take all reasonable steps to ensure that no individual, while performing work on behalf of the contractor or any subcontractor in connection with this agreement (each, a “Contract Worker”), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

The contractor shall provide each Contract Worker with a copy of this Section and will require Contract Workers to participate in agency training on civility in the State workplace if contractor’s (and any subcontractor’s) regular mandatory training programs do not already encompass equivalent or greater expectations. Upon request, the contractor shall provide documentation that each Contract Worker has received such training.

For purposes of this Section, “State workplace” includes any location, permanent or temporary, where a Commonwealth employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a State workplace if the Contract Worker reasonably should know that the phone number, email, or other method of communication is associated with a State workplace or is associated with a person who is a State employee.

The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth reasonably believes to have violated this Section.

This Section creates obligations solely on the part of the contractor. Employees or other third parties may benefit incidentally from this Section and from training materials or other communications distributed on this topic , but the Parties to this agreement intend this Section to be enforceable solely by the Commonwealth and not by employees or other third parties.

V. SPECIAL TERMS AND CONDITIONS:

- A. **AUDIT:** The Contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- B. **AWARD TO MULTIPLE BIDDERS:** The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The award(s) will be made to the lowest responsive and responsible bidder(s) as determined by the Bid Evaluation Procedure explained herein. The Commonwealth reserves the right to conduct any tests it may deem advisable and to make all evaluations. The Commonwealth also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the procuring public body to be in its best interest.
- C. **CANCELLATION OF CONTRACT:** The Purchasing Agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 90 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- D. **eVA ORDERS AND CONTRACTS:** It is anticipated that the contract will result in multiple purchase orders with the applicable eVA transaction fees assessed for each order. Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following: If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eVA.virginia.gov. Contractors should email Catalog or Index Page information to eVA-catalog-manager@dgs.virginia.gov.
- E. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for four (4) successive one year periods under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the Other services category of the CPI-U

section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the Other services category of the CPI-U section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

F. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for 90 days. At the end of the 90 days, the bid may be withdrawn at the written request of the Bidder. If the bid is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.

G. **IDENTIFICATION OF BID ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed Bid should be returned in a separate envelope or package, sealed, and identified as follows:

Solicitation Number and Title: _____

From: _____
Name of Bidder Due Date Time

Street or Box Number

City, State, Zip Code

DSBSD-certified Micro Business or Small Business No. _____

Paula Williams, Senior Contract Specialist of Procurement & Support Services
Name of Contract Officer

H. **SUBMISSION OF SMALL BUSINESS SUBCONTRACTING PLAN, EVIDENCE OF COMPLIANCE WITH SMALL BUSINESS SUBCONTRACTING PLAN, AND SUBCONTRACTOR REPORTING:**

- A. Submission of Small Business Subcontracting Plan: It is the statewide goal of the Commonwealth that 42% of its purchases be made from small businesses certified by DSBSD. This includes discretionary spending in prime contracts and subcontracts. All bidders/offerors are required to submit a Small Business Subcontracting Plan. The contractor is encouraged to offer such subcontracting opportunities to DSBSD-certified small businesses. This shall include DSBSD-certified women-owned and minority-owned businesses and businesses with DSBSD service disabled veteran-owned status when they have also received DSBSD small business certification. Where it is not practicable for any portion of the goods/services to be subcontracted to other suppliers, the bidder/offeror shall note such on the Small Business Subcontracting Plan. No bidder/offeror or subcontractor shall be considered a small business unless certified as such by the Department of Small Business and Supplier Diversity (DSBSD) by the due date for receipt of bids or proposals.

B. Evidence of Compliance with Small Business Subcontracting Plan: Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution monthly reports substantiating compliance in accordance with the small business subcontracting plan. If a variance exists, the contractor shall provide a written explanation. A subcontractor shall be considered a Small Business for purposes of a contract if and only if the subcontractor holds a certification as such by the DSBSD. Payment(s) may be withheld until the purchasing agency confirms that the contractor has certified compliance with the contractor's submitted Small Business Subcontracting Plan or is in receipt of a written explanation of the variance. The agency or institution reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.

C. Prime Contractor Subcontractor Reporting:

1. Each prime contractor who wins an award greater than \$100,000, shall deliver to the contracting agency or institution on a monthly basis, all applicable information for each subcontractor listed on the Small Business Subcontracting Plan that are DSBSD-certified businesses or Employment Services Organizations (ESOs). The contractor shall furnish the applicable information to the purchasing office via the Subcontractor Payment Reporting tool accessible within the contractor's eVA account.
2. In addition each prime contractor who wins an award greater than \$200,000 shall deliver to the contracting agency or institution on a monthly basis, all applicable information on use of subcontractors that are **not** DSBSD-certified businesses or Employment Services Organizations. The contractor shall furnish the all applicable information to the purchasing office via the Subcontractor Payment Reporting tool accessible within the contractor's eVA account.

- I. **PERFORMANCE AND PAYMENTS BONDS**: The successful Bidder(s) shall deliver to the VDACS Purchasing Office executed Commonwealth of Virginia Standard Performance and Labor and Material Payment Bonds for non-construction, each in the sum of \$500,000.00 with the Commonwealth of Virginia as obligee. The surety shall be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. No payment shall be due and payable to the Contractor, even if the contract has been performed in whole or in part, until the bonds have been delivered to and approved by the Purchasing Office. Standard bond forms will be provided by the Purchasing Office prior to or at the time of the award.
- J. **PRIME CONTRACTOR RESPONSIBILITIES**: The Contractor shall be responsible for completely supervising and directing all work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the Prime Contractor. The Contractor agrees that he is fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- K. **SUBCONTRACTS**: No portion of the work shall be subcontracted without prior written consent of the Purchasing agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the Purchasing agency with the names, qualifications, and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

- L. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the Contractor's expense.
- M. **CONTINUITY OF SERVICES:**
- a.) The Contractor recognizes that the services under this contract are vital to the Agency and must be continued without interruption and that, upon contract expiration, a successor, either the Agency or another contractor, may continue them. The Contractor agrees:
 - i) To exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor;
 - ii) To make all Agency owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
 - iii) That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.
 - b) The Contractor shall, upon written notice from the Contract Officer, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval.
 - c) The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.
- N. **STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Indicate the above information on the SCC Form provided. Contractor agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation the SCC Form provided) is streamlined and not definitive, and the Commonwealth's use and acceptance of such form, or its acceptance of Contractor's statement describing why the bidder or offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Contractor as demonstrating compliance.
- O. **E-VERIFY PROGRAM:** EFFECTIVE 12/1/13. Pursuant to *Code of Virginia*, §2.2-4308.2., any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the

Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

- P. **ADDITIONS OR DELETIONS TO REGIONS:** School districts or other recipient agencies may be moved between regions with mutual consent of Contractor and VDACS. The right is reserved to delete and/or add localities to this program during the term of the contract, upon mutual consent of VDACS and the Contractor. Contractor also agrees to service any new agencies within the contract area that may be approved to receive donated foods.
- Q. **FUEL ADJUSTMENT ALLOWANCE:** Fuel prices may fluctuate significantly during the contract period. VDACS will review Full Service Diesel Fuel Cash Prices as compiled by the Energy Information Administration as of November 30 of each year. The average price for the 12 month period ending November 30 will be compared with the average price for the same 12 month period one year earlier. For each full \$.08 increase per gallon in the average annual price over the average annual price for the period one year earlier, the fee per case for delivery of USDA donated foods will be increased by \$.01 effective January 1 of the following year for the remainder of the contract. For each full \$.08 decrease per gallon, the fee per case for delivery of USDA donated foods will be decreased by \$.01.

The adjustments described under Section Q were developed utilizing the following data:

- ☐ Average round trip mileage per delivery truck = 300 miles
- ☐ Average number of cases delivered per trip = 400 cases
- ☐ Average fuel consumption = 6 miles per gallon
- ☐ \$.08 fuel cost charge divided by 6 MPG = \$.0133 increase per mile
- ☐ \$.0133 X 300 miles = \$3.99 increased cost per trip
- ☐ \$3.99 divided by 400 cases = \$.01 increased cost per case

VI. **METHOD OF PAYMENT:**

1. Contractor shall submit an invoice for items delivered to and accepted by recipient agencies on a monthly basis or on other mutually agreed upon intervals. Invoices shall be submitted to the address for the agencies to which items are delivered or to a central billing office in the case of public school divisions desiring this billing method. Each invoice shall include a summary of delivery or pickup tickets for the period. Each referenced ticket shall be listed in numerical sequence and show the total number of cases, bags, etc. delivered. Charges for pickup by agencies shall be listed separately on invoices. There is no minimum quantity of foods required per stop; however, Contractors may bill recipient agencies a minimum fee equivalent to the delivery for twenty (20) cases in instances where fewer than twenty (20) cases are delivered per stop. Contractor shall count cases of commodities and purchased foods delivered per stop in determining application of this minimum billing. **The only exception to the 20 case minimum is charitable institutions. They should be charged only for the actual case count delivered and such distribution charges shall be forwarded to the VDACS office for payment.**
2. If a Contractor charges for storage beyond the initial 60 days storage period, such charges shall be stated on the monthly statement as incurred. End of the year or other lump sum billings shall not be allowed. (See VI.4) Such charges shall reference the

item(s) for which charges are assessed by item name, VDACS delivery order number, and date of receipt. **Any storage fees incurred by a charitable institution shall be the responsibility of said institution and such charges shall be forwarded directly to the institution for payment.**

3. In the event an agency falls more than 60 days in arrears in payments, VDACS officials and Contractor may jointly agree to suspend deliveries.
4. If state and federal funds are available to pay a portion of the Contractor's fees for specified recipient agencies, Contractor agrees upon notification by VDACS to bill and accept payment from VDACS of a standard amount per case (or agency) as determined by VDACS. After notification from VDACS, Contractor shall submit vendor's invoice directly to VDACS with the specified supporting documentation for payment. Any remaining differences in the usual fee must be billed by the Contractor to the specified recipient agencies.

VII. PRICING SCHEDULE INSTRUCTIONS:

PRICING CRITERIA: Bid prices shall be quoted on pages **26 & 27** on a per-case basis for each element. Price per case shall apply uniformly to dry, chilled, and frozen foods. Price per case shall include charges for receipt, handling, distribution, and 60 days storage of food. Price per case stated shall be all inclusive and no other charges shall be allowed.

Pricing Explanation:

1. Weekly delivery - Price per case for agencies that request delivery once every seven days.
2. Every other week delivery - Price per case for agencies that request delivery once every fourteen days.
3. Pickups by recipient agencies - Price per case to be assessed to recipient agencies that pick up items from the Successful Bidder's warehouse.
4. Charges for storage beyond 60 days – Successful Bidder(s) may assess a charge per case per month for each case of food remaining in storage beyond 60 days for the convenience of recipient agencies or VDACS. Indicate price per case. Such charges may be assessed for a full month on the 61st day and for each succeeding month's storage period. Successful Bidder(s) may double the storage fee per case per month for food remaining in storage beyond 6 months.

Bidders are not required to bid on each Lot. If selecting not to bid on any of the Lots, please leave all pricing lines blank for that Lot. **Bidders shall not leave any price line blank for any Lot being bid or the bid may be ruled non-responsive.**

- VIII. **BID EVALUATION PROCEDURE:** The bids will be evaluated on a case price per region basis. Each of the four pricing elements within each region will be assigned the weight factors listed below which will be multiplied times the bid case price and then the results added together to determine the lowest bid within each region.

Tabulation of all bids will be based on whole dollars and cents, not on fractions of cents. For example, on the "Pick Up By Agency" line, if the case price would be .92, that amount would be multiplied by 5%, equaling 0.046. The bid price for this line would be 0.04. The digits following the hundredth place will be ignored.

This hypothetical example is only intended to show the procedure to be used.

Weekly Delivery -	case price	\$ _____	X 15% = \$ _____
Every Other Week -	case price	\$ _____	X 65% = \$ _____
Pick Up By Agency -	case price	\$ _____	X 5% = \$ _____
Storage P/M beyond 60 days -	case price	\$ _____	X 15% = \$ _____
		GRAND TOTAL	\$ _____

EXAMPLE ONLY

Bidder Name: _____

Please do not make any changes to the Scope of Work or Bid Form. Any additions, deletions or changes to the described services can be cause for rejection of your Bid.

Lot 5: REGION V – ROANOKE AREA

1. Weekly delivery price per case: \$ _____
2. Every-other-week delivery price per case: \$ _____
3. Pickup by recipient agency from Distributing Agency per case: \$ _____
4. Storage price per case per month beyond the initial 60 days for convenience of recipient agency or VDACS: \$ _____

Lot 6: REGION VI – SOUTHSIDE CENTRAL VIRGINIA

1. Weekly delivery price per case: \$ _____
2. Every-other-week delivery price per case: \$ _____
3. Pickup by recipient agency from Distributing Agency per case: \$ _____
4. Storage price per case per month beyond the initial 60 days for convenience of recipient agency or VDACS: \$ _____

RETURN OF THIS SHEET IS REQUIRED

VENDOR DATA SHEET**IFB# 301-22-128**

The following information is required as part of your response to this solicitation. Failure to complete and provide this sheet may result in finding your bid nonresponsive. Qualification: The bidder must have the capability and capacity in all respects to satisfy fully all the contractual requirements.

1. Bidder's primary contact:

Name and Title: _____ Phone: (____) _____

2. Years in business: Indicate the length of time you have been in business providing this type of good or service:

_____ Years _____ Months

3. Vendor Information:

eVA vendor ID: _____

4. Indicate below a listing of at least four (4) current or recent accounts, either commercial or governmental, that your company is servicing, has serviced, or has provided similar goods. Include the length of service and the name, address, and telephone number of the point of contact.

A. Company: _____ Contact: _____

Phone : (____) _____ Email: _____

Project: _____

Dates of Service: _____ Value: \$ _____

B. Company: _____ Contact: _____

Phone : (____) _____ Email: _____

Project: _____

Dates of Service: _____ Value: \$ _____

C. Company: _____ Contact: _____

Phone : (____) _____ Email: _____

Project: _____

Dates of Service: _____ Value: \$ _____

D. Company: _____ Contact: _____

Phone : (____) _____ Email: _____

Project: _____

Dates of Service: _____ Value: \$ _____

I certify the accuracy of this information:

Signed: _____ Title: _____ Date: _____

RETURN OF THIS PAGE IS REQUIRED

ATTACHMENT A**State Corporation Commission Form****Virginia State Corporation Commission (SCC) registration information.****The Offeror:**

- ☐ is a corporation or other business entity with the following SCC identification number:
_____ **-OR-**
- ☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**
- ☐ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the Offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from Offeror's out-of-state location) **-OR-**
- ☐ is an out-of-state business entity that is including with this proposal an opinion of legal counsel which accurately and completely discloses the undersigned Offeror's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the *Code of Virginia*.

****NOTE**** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver):

RETURN OF THIS SHEET IS REQUIRED

**ATTACHMENT B:
Small Business Subcontracting Plan**

It is the goal of the Commonwealth that over 42% of its purchases be made from small businesses. All potential bidders are required to return this document with their bid response in order to be considered responsive.

Small Business: "Small business (including micro)" means a business which holds a certification as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) on the due date for proposals. This shall also include DSBSD-certified women- owned and minority-owned businesses and businesses with DSBSD service disabled veteran owned status when they also hold a DSBSD certification as a small business on the proposal due date. Currently, DSBSD offers small business certification and micro business designation to firms that qualify.

Certification applications are available through DSBSD online at www.SBSD.virginia.gov (Customer Service).

Bidder Name: _____

Preparer Name: _____ **Date:** _____

Who will be doing the work: ☐ I plan to use subcontractors ☐ I plan to complete all work

Instructions:

- A. If you are certified by the DSBSD as a micro/small business, complete only Section A of this form.
- B. If you are not a DSBSD-certified small business, complete Section B of this form. For the bid to be considered and the bidder to be declared responsive, the bidder shall identify the portions of the contract that will be subcontracted to DSBSD-certified small business for the initial contract period in relation to the bidder's total price for the initial contract period in Section B.

Section A

If your firm is certified by the DSBSD provide your certification number and the date of certification.

Certification number: _____ Certification Date: _____

Section B

If the "I plan to use subcontractors box is checked," populate the requested information below, per subcontractor to show your firm's plans for utilization of DSBSD-certified small businesses in the performance of this contract for the initial contract period in relation to the bidder's total price for the initial contract period. Certified small businesses include but are not limited to DSBSD-certified women-owned and minority-owned businesses and businesses with DSBSD service disabled veteran-owned status that have also received the DSBSD small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc. It is important to note that these proposed participation will be incorporated into the subsequent contract and will be a requirement of the contract. Failure to obtain the proposed participation dollar value or percentages may result in breach of the contract.

B. Plans for Utilization of DSBSD-Certified Small Businesses for this Procurement**Subcontract #1**

Company Name: _____ SBSD Cert #: _____

Contact Name: _____ SBSD Certification: _____

Contact Phone: _____ Contact Email: _____

Value % or \$ (Initial Term): _____ Contact Address: _____

Description of Work: _____

Subcontract #2

Company Name: _____ SBSD Cert #: _____

Contact Name: _____ SBSD Certification: _____

Contact Phone: _____ Contact Email: _____

Value % or \$ (Initial Term): _____ Contact Address: _____

Description of Work: _____

Subcontract #3

Company Name: _____ SBSD Cert #: _____

Contact Name: _____ SBSD Certification: _____

Contact Phone: _____ Contact Email: _____

Value % or \$ (Initial Term): _____ Contact Address: _____

Description of Work: _____

Subcontract #4

Company Name: _____ SBSD Cert #: _____

Contact Name: _____ SBSD Certification: _____

Contact Phone: _____ Contact Email: _____

Value % or \$ (Initial Term): _____ Contact Address: _____

Description of Work: _____

(Add additional Subcontractor information lines, if needed.)

RETURN BOTH PAGES OF ATTACHMENT B

APPENDIX A. RECEIVING, INVENTORY, AND DELIVERY PROJECTIONS:

REGION V – ROANOKE AREA

Volume: Based on data from the 2020/2021 year, it is anticipated that approximately 44,333 cases of USDA Donated Foods will be available in Region V for distribution to schools and institutions during the 2022/2023 school year. It is further anticipated that this volume will be categorized as follows:

- Dry Groceries 11,139 cases (consisting of 31 items)
- Frozen Foods 29,510 cases (consisting of 92 items)
- Chilled Foods 3,684 cases (consisting of 11 items)
- **TOTAL 44,333 cases**

NOTE: Approximately 1,137 cases were stored over the summer at the distributor's warehouse by schools in Region V. Of this, approximately 58% is frozen, approximately 2% is chilled and approximately 40% is dry.

On a randomly selected day the following quantities were in inventory:

Dry Groceries-2,041 cases, consisting of 16 items

Frozen Foods-8,156 cases, consisting of 60 items

Chilled Foods-1,147 cases, consisting of 5 items

REGION VI – SOUTHSIDE CENTRAL VIRGINIA

Volume: Based on data from the 2020/2021 year, it is anticipated that approximately 43,520 cases of USDA Donated Foods will be available in Region VI for distribution to schools and institutions during the 2022/2023 school year. It is further anticipated that this volume will be categorized as follows:

- Dry Groceries 12,208 cases (consisting of 30 items)
- Frozen Foods 29,410 cases (consisting of 79 items)
- Chilled Foods 1,902 cases (consisting of 6 items)
- **TOTAL 43,520 cases**

NOTE: Approximately 2,806 cases were stored over the summer at the distributor's warehouse by schools in Region VI. Of this, approximately 62% is frozen, approximately 5% is chilled and approximately 33% is dry.

On a randomly selected day the following quantities were in inventory:

Dry Groceries-2,675 cases, consisting of 23 items

Frozen Foods-5,480 cases, consisting of 31 items

Chilled Foods-945 cases, consisting of 5 items

APPENDIX B. NUMBER OF AGENCIES RECEIVING DONATED FOODS BY REGION:

The following chart lists the number of schools within the Regions receiving USDA Donated Foods. Private schools and charitable institutions are totaled together. **NOTE, ALTHOUGH CORRECTIONAL INSTITUTIONS ARE APPROVED, THEY RECEIVE VERY FEW DONATED FOODS.**

(See Appendix C for the **School and Agency Addresses by Region** for addresses of divisional school board offices, private schools, charitable institutions, and correctional institutions). Local school board offices should be contacted for names/addresses of individual schools within each school district.

REGION V: ROANOKE VALLEY PUBLIC SCHOOLS:

<u>School District</u>	<u># of Schools</u>	<u>School District</u>	<u># of Schools</u>
Alleghany	8	Rockbridge Co.	6
Highlands			
Amherst Co.	10	Buena Vista City	4
Bath Co.	3		
Bedford Co.	19	Lexington City	2
Botetourt Co.	11	Martinsville City	5
Craig Co.	1	Radford City	4
Floyd Co.	5	Roanoke City	26
Franklin Co.	17	Salem City	6
Giles Co.	5		
Henry Co.	14	Private Schools	1
Montgomery Co.	20	Charitable Institutions	6
Patrick Co.	7	Correctional Facilities	1
Pulaski Co.	7		
Roanoke Co.	26	DELIVERY SITES:	214

REGION VI: SOUTHSIDE CENTRAL VIRGINIA PUBLIC SCHOOLS:

<u>School District</u>	<u># of Schools</u>	<u>School District</u>	<u># of Schools</u>
Amelia Co.	3	Nottoway Co.	6
Appomattox Co.	4	Pittsylvania Co.	20
Brunswick Co.	5	Prince Edward Co.	3
Buckingham County	5	Sussex Co.	4
Campbell Co.	14	Danville City	13

Charlotte Co.	8	Lynchburg City	16
Cumberland Co.	2		
Dinwiddie Co.	8	Private Schools	3
Greenville Co.	4	Charitable Institutions	7
Halifax Co.	10	Correctional Facilities	8
Lunenburg Co.	4	CACFP	1
Mecklenburg Co.	9	DELIVERY SITES:	157

APPENDIX C. SCHOOL AND AGENCY ADDRESSES BY REGION:

REGION V ROANOKE VALLEY

PUBLIC SCHOOLS

Alleghany Highlands
P.O. Drawer 140
Low Moor, VA 24457

Amherst County
P.O. Box 1257
Amherst, VA 24521

Bath County
P.O. Box 67
Warm Springs, VA 24484

Bedford County
P.O. Box 748
Bedford, VA 24523

Botetourt County
105 Poor Farm Road
Fincastle, VA 24090

Craig County
P.O. Box 245
New Castle, VA 24127

Floyd County
140 Harris Hart Road NE
Floyd, VA 24091

Franklin County
25 Bernard Road
Rocky Mount, VA 24151

Giles County
151 School Road
Pearisburg, VA 24134

Henry County
P.O. Box 8958
Collinsville, VA 24078

Montgomery County
208 College Street
Christiansburg, VA 24073

Patrick County
P.O. Box 346
Stuart, VA 24171

Pulaski County
202 N Washington Avenue
Pulaski, VA 24301

Roanoke County
5937 Cove Road
Roanoke, VA 24019

Rockbridge County
2893 Collierstown Road
Lexington, VA 24450

Buena Vista City
2329 Chestnut Avenue, Suite A
Buena Vista, VA 24416

Lexington City
300 Diamond St.
Lexington, VA 24450

Martinsville City
800 Ainsley St.
Martinsville, VA 24112

Radford City
1612 Wadsworth Street
Radford, VA 24141

Roanoke City
P.O. Box 13145
Roanoke, VA 24031

Salem City
510 S College Avenue
Salem, VA 24153

PRIVATE/STATE SCHOOLS

Roanoke Juvenile Detention
498 Coyner Springs Road
Roanoke, VA 24012

CHARITABLE INSTITUTIONS

Bedford County Nursing Home
1229 County Farm Road
Bedford, VA 24523

Rescue Mission
P.O. Box 11525
Roanoke, VA 24022

RAM House
824 Campbell Avenue SW
Roanoke, VA 24016

Old Dominion Job Corps
1073 Father Judge Rd.
Monroe, VA 24574

Catawba Hospital
PO Box 200
Catawba, VA 24070

CORRECTIONAL FACILITIES

Patrick Henry Correctional
P.O. Box 1090
Ridgeway, VA 24148

Henry County Jail
3250 Kings Mountain Road
Martinsville, VA 24112

Central VA Training Ctr.
521 Colony Rd.
Madison Heights, VA 24572

**REGION VI SOUTHSIDE CENTRAL
VIRGINIA**

PUBLIC SCHOOL DIVISIONS

Amelia County
8701 Otterburn Rd, Suite 101
Amelia, VA 23002

Appomattox County
PO Box 548
Appomattox, VA 24522

Brunswick County
1718 Farmers Field Rd.
Lawrenceville, VA 23868

Buckingham County
15595 W. James Anderson
Buckingham, VA 23931

Campbell County
194 Dennis Riddle Dr.
Rustburg, VA 24588

Charlotte County
P.O. Box 790
Charlotte, VA 23923

Cumberland County
P.O. Box 170
Cumberland, VA 23040

Dinwiddie County
P.O. Box 7
Dinwiddie, VA 23841

Greensville County
105 Ruffin Street
Emporia, VA 23847

Halifax County
P.O. Box 1849
Halifax, VA 24558

Lunenburg County
P.O. Box 710
Kenbridge, VA 23944

Mecklenburg County
175 Mayfield Dr.
Boydton, VA 23917

Nottoway County
P.O. Box 47
Nottoway, VA 23955

Pittsylvania County
P.O. Box 232
Chatham, VA 24531

Prince Edward County
35 Eagle Drive
Farmville, VA 23901

Sussex County
21390 Sussex Drive
Stony Creek, VA 23882

Danville City
P.O. Box 9600
Danville, VA 24543

Lynchburg City
P.O. Box 2497
Lynchburg, VA 24505

PRIVATE/STATE SCHOOLS

Jackson Field House
546 Walnut Grove Drive
Jarratt, VA 23867

Lynchburg Regional Juvenile Detention
1400 Florida Avenue
Lynchburg, VA 24501

W.W. Moore Juvenile Detention
603 Colquhoun Street
Danville, VA 24541

Little Blessings Childcare
1133 Locust Drive
Cascade, VA 24069

CHARITABLE INSTITUTIONS

Lynchburg Daily Bread
721 Clay Street
Lynchburg, VA 24504

Lynchburg Community Action
926 Commerce St.
Lynchburg, VA 24504

Missionary United
P.O. Box 1623
South Boston, VA 24592

Southside Senior Citizens Center, Inc.
P.O. Box 217
Lawrenceville, VA 23868

Piedmont Geriatric Hospital
P.O. Box 427
Burkeville, VA 23922

Central State Hospital
P.O. Box 4030
Petersburg, VA 23803

Virginia Center for Behavioral Rehab
P.O. Box 548
Burkeville, VA 23933

Halifax Correctional Unit #23
PO Box 1789
Halifax, VA 24558

Lunenburg Correctional Center
P.O. Box 1424
Victoria, VA 23974

Piedmont Regional Jail
P.O. Drawer 388
Farmville, VA 23901

Rustburg Correctional Unit #9
479 Camp Nine Road
Rustburg, VA 24588-0340

Charlotte County Jail
222 Law Lane
Charlotte C.H., VA 23923

Blue Ridge Regional Jail
P.O. Box 6078
Lynchburg, VA 24505

CORRECTIONAL INSTITUTIONS

Baskerville Correctional Unit #4
4150 Hayes Mill Road
Baskerville, VA 23915

Buckingham Correctional Center
P.O. Box 430
Dillwyn, VA 23936

Dillwyn Correctional Center
P.O. Box 670
Dillwyn, VA 23936

Green Rock Corrections Center
475 Green Rock Lane
Chatham, VA 24531

APPENDIX D – REGIONAL MAP

DISTRIBUTOR REGIONS

Region I--Tidewater

Region II--Richmond/Central Virginia

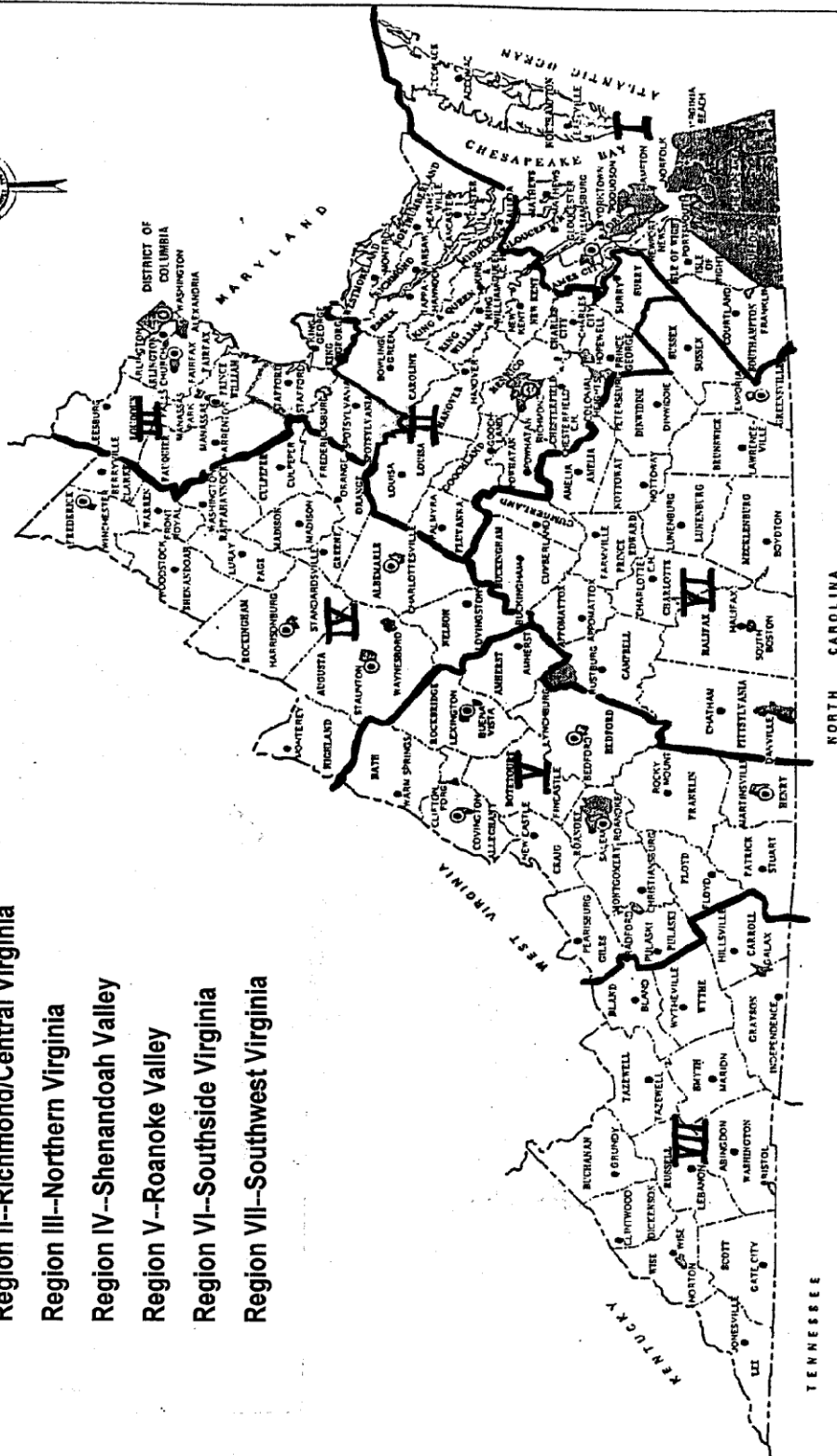
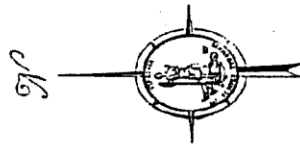
Region III--Northern Virginia

Region IV--Shenandoah Valley

Region V--Roanoke Valley

Region VI--Southside Virginia

Region VII--Southwest Virginia



Appendix E

Annex 3-I

DGS-41-100

COMMONWEALTH OF VIRGINIA STANDARD PERFORMANCE BOND FOR NON-CONSTRUCTION

KNOW ALL MEN BY THESE PRESENTS: That _____, the Contractor ("Principal") whose principal place of business is located at _____, and _____ ("Surety"), whose address for delivery of notices is located at _____, are held and firmly bound unto the Commonwealth of Virginia, _____ ("Obligee"), in the amount of _____ dollars (\$) (the "Bonded Sum") for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____ entered into Contract No. _____ with Obligee for _____, which contract (the "Contract") is by reference expressly made a part hereof;

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly and faithfully perform all its obligations under said Contract in strict conformity with the plans, specifications and conditions of the Contract during the time specified in the Contract and any extensions thereof as may be granted by the Obligee with or without notice to Surety, and shall also promptly and faithfully perform all requirements of any amendment to the Contract made as provided in the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Any amendments which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Obligee of any extension of time for the performance of the Contract, or any other amendments, extensions or forbearance on the part of either or both of the Obligee or the Principal to the other shall not in any way release the Principal and the Surety, or either of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety of any such amendment, extension, or forbearance being hereby waived.

Whenever the Principal is in breach of the Contract and the Obligee has given Surety written notice of such breach and written demand for Surety to act under this paragraph, the Surety shall contact the Obligee in writing and arrange an in-person or telephone conference to be held with Obligee within ten days of such written demand to discuss methods of remedying the breach. Within forty days after such written demand, the Surety shall take one of the following actions: (1) fully remedy the breach; (2) unconditionally pay the Bonded Sum to the Obligee; (3) if acceptable to Obligee (in Obligee's sole discretion), enter into a written takeover agreement with Obligee by which Surety (through specified agents or independent contractors) undertakes to perform all of Principal's obligations under the Contract and pay all damages for which Principal is liable under the Contract; or (4) agree to pay Obligee all amounts (not exceeding the Bonded Sum) by which Obligee is damaged as a result of Principal's breach, as such damages are or were incurred, including without limitation, the net cost of obtaining some or all of the Contract performance from an alternative source through the Public Procurement Act or other legally available procedure, plus all damages resulting from the nonperformance or from the delay between the Contract deadline(s) and the actual completion of the Contract performance.

The time required for the above conference or to complete the above actions shall not toll any Contract deadlines or operate as a waiver of any of the Obligee's rights under the Contract or under this Performance Bond. If Surety fails to take one of the four specified actions within forty days after such written demand, Surety shall, within such time, provide Obligee with a written statement of any basis upon which it denies obligation to take such action, and at any time after such forty day period, Obligee may proceed to complete the work in any reasonable manner without further notice to Surety and recover from Surety (up to the Bonded Sum) the damages caused by Principal's breach.

No action shall be brought on this bond unless brought within one year after (a) completion of the Contract, including the expiration of all warranties and guarantees, or (b) discovery of the defect or breach of warranty that gave rise to the action. No other delay by Oblige in exercising rights under this bond shall operate as a waiver of such rights. The validity, interpretation, and enforcement of this Bond shall be governed in all respects by Virginia law. Any suit in connection with this Bond shall be brought solely in the appropriate circuit court of the Commonwealth of Virginia.

Signed and sealed this ____ day of _____, 20__.

Witness

_____(SEAL)

Principal

By

Title: _____

_____(SEAL)

Surety

By:

Attorney-in-Fact

Typed Name: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH/STATE (strike one) OF _____

CITY/COUNTY (strike one) OF _____

I, the undersigned notary public, hereby certify that _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed to the foregoing performance bond in the sum of _____, which is dated _____ and which names the Commonwealth of Virginia, _____ as Oblige, personally appeared before me today in the above jurisdiction and, being duly sworn, stated that s/he is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing bond, that s/he is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the power of attorney that is dated _____ and attached hereto, and that on behalf of the above Surety, s/he executed the foregoing bond and acknowledged the foregoing bond before me as the above Surety's act and deed. S/he has further stated under oath before me at this same time and place that the attached power of attorney has not been revoked and that s/he has not and had not, at the time of signing and delivering the bond or doing any other act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death, disability or otherwise, or notice of any facts indicating the same.

Given under my hand this ____ day of _____, 20__.

_____(SEAL)

Notary Public

My name (printed) is:

My commission expires:

APPROVED AS TO FORM:

Assistant Attorney General

Date

Appendix F

Annex 3-H

DGS-41-099

COMMONWEALTH OF VIRGINIA STANDARD LABOR AND MATERIAL PAYMENT BOND FOR NON-CONSTRUCTION

This bond is issued simultaneously with a Performance Bond in favor of the Obligee, conditioned on the full and faithful performance of the contract.

KNOW ALL MEN BY THESE PRESENTS: That _____

(Insert full name or legal title of Contractor and address)

as Principal, and _____
(Insert full legal title of the Surety)

as Surety, are held and firmly bound unto the Commonwealth of Virginia

(name of the Agency or Institution of the Commonwealth)

as Obligee, in the amount of _____
Dollars \$_____, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated _____ 20__, entered into a contract with

_____ for _____

which contract (the "Contract") is by references expressly made a part hereof.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Principal shall promptly make payment to all claimants as hereinafter defined, for labor performed and material furnished in the prosecution of the work provided for in the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject however, to the following conditions.

The Principal and Surety hereby jointly and severally agree as follows:

1. A claimant is defined as one having a direct Contract with the Principal or with a subcontractor of the Principal for labor, material, or both for use in the performance of the Contract. A "subcontractor" of the Principal, for the purposes of this bond only, includes not only those subcontractors having a direct contractual relationship with the Principal, but also any other contractor who undertakes to participate in the work which the Principal is to perform under the aforesaid Contract, whether there are one or more intervening subcontractors contractually positioned between it and the Principal (for example, a subcontractor). "Labor" and "material" shall include but not be limited to, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the work site.
2. Subject to the provisions of paragraph 3, any claimant, who has performed labor or furnished material in accordance with the Contract documents in the prosecution of the work provided in the Contract, who has not been paid in full therefore before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on this bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The Obligee need not be a party to such action and shall not be liable for the payment of any costs or expenses of any such suit.

3. Any claimant who has a direct contractual relationship with any subcontractor of the Principal from whom the Principal has not required a subcontractor payment bond, but who has no contractual relationship, express or implied, with the Principal, may bring an action on this bond only if he has given written notice to the Principal within one hundred eighty (180) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material as furnished. Notice to the Principal shall be served by registered or certified mail "Return Receipt Requested," postage prepaid, in an envelope addressed to the Principal at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this paragraph 3.
4. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, the limitation embodied within this bond shall be deemed to be amended as to be equal to the minimum period of limitation permitted by such law.
 - b. Other than in a Virginia court of competent jurisdiction, with venue as provided by statute, or in the United States District Court for the district in which the project, or any part thereof is situated.
5. The amount of this shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this ____ day of _____, 20__.

Witness

_____(SEAL)

Principal

By: _____

Title: _____

_____(SEAL)

Surety

By: _____

Attorney-in-Fact

Typed Name: _____

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

COMMONWEALTH/STATE (strike one) OF _____

CITY/COUNTY (strike one) OF _____

I, the undersigned notary public, hereby certify that _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed to the foregoing payment bond in the sum of _____, which is dated _____ and which names the Commonwealth of Virginia, _____ as Obligee, personally appeared before me today in the above jurisdiction and, being duly sworn, stated that s/he is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing bond, that s/he is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the power of attorney that is dated _____ and attached hereto, and that on behalf of the above Surety, s/he executed the foregoing bond and acknowledged the foregoing bond before me as the above Surety's act and deed. S/he has further stated under oath before me at this same time and place that the attached power of attorney has not been revoked and that s/he has not and had not, at the time of signing and delivering the bond or doing any other act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death, disability or otherwise, or notice of any facts indicating the same.

Given under my hand this ____ day of _____, 20__.

_____(SEAL)

Notary Public

My name (printed) is:

My commission expires:

APPROVED AS TO FORM

Assistant Attorney General

Date